

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT
WESTERN DIVISION - CINCINNATI

IN RE:)	CHAPTER 13
)	
HOWARD D. JONES	)	CASE NO. 04-15309
)	
Debtor	)	JUDGE JEFFERY HOPKINS
)	
	)	MOTION OF U.S. BANK N.A., AS
	)	SUCCESSOR BY MERGER TO THE LEADER
	)	MORTGAGE COMPANY, its successors
	)	and assigns FOR RELIEF FROM
	)	STAYAND CO-DEBTOR STAY
)	
	)	PROPERTY ADDRESS:
	)	** 8532 Sunlight Drive
	)	Cincinnati, Ohio 45231

U.S. BANK N.A., AS SUCCESSOR BY MERGER TO THE LEADER MORTGAGE COMPANY, its successors and assigns (the "Movant") moves this Court, under §§ 361, 362, 1301 and 363 and other sections of the Bankruptcy Reform Act of 1978, as amended (the "Bankruptcy Code") and under Rule 4001 and other rules of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for an Order conditioning, modifying or dissolving the automatic stay imposed by § 362 and § 1301 of the Bankruptcy Code. In support of this Motion, the Movant states:

MEMORANDUM IN SUPPORT

1. The Court has jurisdiction over this matter under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). The venue of this case and this Motion is proper under 28 U.S.C. §§ 1408 and 1409.

2. On June 14, 1999 the Debtor listed above (collectively, the "Debtor") and the Co-Debtor, Donya Jones, obtained a loan from Movant in the amount of \$74,362.00. Such loan was evidenced by a promissory note dated June 14, 1999 (the "Note"), a copy of which is attached as Exhibit A.

3. To secure payment of the Note and performance of the other terms contained in it, the Debtor and Co-Debtor executed a Mortgage dated June 14, 1999 (the "Mortgage"). The Mortgage granted a lien on the real and/or personal property (the "Collateral") owned by the Debtor, and Co-Debtor, located at 8532 Sunlight Drive, Cincinnati, Ohio 45231 and more fully described in the Mortgage.

4. The lien created by the Mortgage was duly perfected by the filing of the Mortgage in the office of the Hamilton County Recorder on June 16, 1999. A copy of the Mortgage is attached as Exhibit B. The lien is the 1st lien on the Collateral.

5. The Note and Mortgage were transferred as follows:

On 06/16/1999 to THE LEADER MORTGAGE COMPANY. The transfer is evidenced by the document attached to the Motion on Exhibit C.

6. The value of the Collateral is \$72,000.00. This valuation is based on Debtor's Schedules.

7. As of the date of this Motion, there is currently due and owing on the Note the outstanding balance of \$71,011.17 plus

interest accruing thereon at the rate of 5.7% per annum from November 1, 2002.

8. Other parties known to have an interest in the Collateral are: The Co-Debtor, Donya Jones, has an undivided one-half interest in the property. There is a Judgement Lien in favor of Ohio Department of Taxation Revenue Recovery Section in the amount of \$117.00. The Treasurer of Hamilton County has or claims to have an interest in the property.

9. The Movant is entitled to relief from the automatic stay under §§ 362(d)(1) and/or 362(d)(2) and 1301 for these reason(s):

Debtor's plan states that the Debtor shall make post-petition payments directly to the Movant outside the Chapter 13 plan. Debtor has failed to make these periodic payments to Movant since the commencement of this bankruptcy case, which unpaid payments are in the aggregate amount of \$1,849.08, through September 30, 2006.

Movant is entitled to Relief from the Co-Debtor Stay imposed by § 1301 in that (1) as between the Debtor and Co-Debtor, the co-debtor received the consideration for the claim held by Movant; (2) the plan filed by the Debtor fails to provide Movant's claim in full; and/or (3) Movant's interest would be irreparably harmed by continuation of the stay.

10. Movant has completed the worksheet required pursuant to LBR 4001-1(a)(1). The worksheet is attached hereto as Exhibit D.

WHEREFORE, Movant prays for an Order from the Court granting Movant relief from the automatic stay of § 362 and § 1301 of the Bankruptcy Code to permit Movant to proceed under law and for such other and further relief to which the Movant may be entitled.

Respectfully submitted,

/s/ Michael S. Arnovitz
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NOTICE OF MOTION FOR RELIEF FROM STAY

Please take NOTICE that the attached Motion for Relief from Stay will be filed with the Bankruptcy Court. The undersigned will present to the Court a proposed order granting the relief sought unless, within twenty (20) days after the service date set forth on the attached certificate of service, a written memorandum in opposition along with a request for a hearing is filed with the Court and served on the undersigned. Failure to file a response and accompanying memorandum on a timely basis may be cause for the Court to grant the Motion as filed without further notice.

Furthermore, notice is given that, if the attached request seeks relief from the stay or acts against property of the estate, such stay will terminate with respect to the requesting party unless, within thirty (30) days of the filing of the attached request, the Court orders the stay continued in effect pending, or as a result of, a final hearing pursuant to 11 U.S.C. Section 362(e).

/s/ Michael S. Arnovitz
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CERTIFICATE OF SERVICE

I hereby certify that on September 5, 2006, a copy of the foregoing Motion for Relief from Stay and Notice of Motion for Relief from Stay was served on the following registered ECF participants, electronically through the Court's transmission facilities at their email addresses registered with the Court:

1. Office of the U.S. Trustee
Served Electronically
2. Margaret Burks, Trustee
* Served Electronically *

I hereby certify that the following were served by mailing the same by ordinary U.S. mail, postage prepaid, to the persons listed below:

1. Office of the U.S. Trustee
36 E 7th St., Suite 2050
Cincinnati, OH 45202
2. Margaret A. Burks, Trustee
36 East Fourth Street, Suite 900
Cincinnati, Ohio 45202
3. Daniel S Zegarski, Esq.
700 Walnut Street, Suite 202
Cincinnati, Ohio 45202
4. Howard D. Jones, Debtor
8532 Sunlight Drive
Cincinnati, Ohio 45231
5. Hamilton County Treasurer
138 East Court Street
Room 402
Cincinnati, Ohio 45202
6. Ohio Department of Taxation
Revenue Recovery Section
101 E. Town Street
Columbus, Ohio 43215
7. Donya Jones
8532 Sunlight Drive
Cincinnati, Ohio 45231

/s/ Michael S. Arnovitz
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